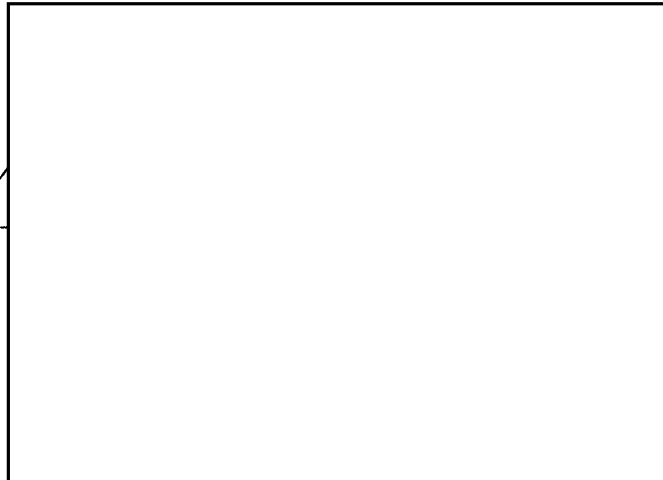


~~SECRET~~571-72  
571-72

## Minutes of the Agency Contract Review Board

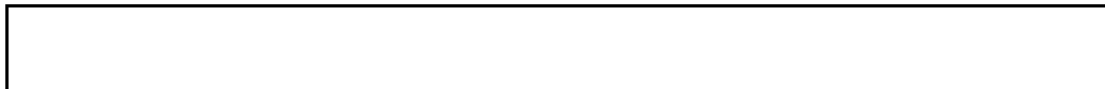
26 January 1972

PRESENT:



1. The meeting of the Contract Review Board was called to order at 1015 hours on 26 January 1972 in the Procurement Management Staff, 1226 Ames Building, by [redacted] Deputy Director of Logistics.

2. The Board convened to review and make recommendations to the Director of Logistics on the following cases:



25X1

3. [redacted]

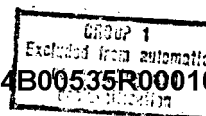
The case was presented by the Contracting Officer, [redacted] The Board was advised of the following facts:

25X1

a. The contractor has asked for an increase in the estimated cost of the contract to cover an overrun in the amount of [redacted]

25X1

b. The contractor has fulfilled the requirements of the Limitation of Cost Clause in the contract, in that he advised the Agency of the anticipated overrun in a timely manner.

~~SECRET~~

**SECRET**

Minutes of the ACRB - 26 January 1972

- c. The technical office is in accord with the contractor's request.
- d. As a separate action the technical office plans to change the scope of the contract and increase the estimated cost proportionately.
4. The Contracting Officer recommends the Board approve the overrun funding. The Board unanimously agreed to recommend that the Director of Logistics approve the execution of an amendment to the existing contract to increase the estimated cost to cover the overrun.
5. [redacted]  
[redacted] for introductory remarks on the Agency's historical policy regarding the recognition of overruns resulting from adjustments in overhead rates. The significant points of [redacted] remarks were: 25X1
- a. At one time the general practice of all Government agencies including CIA was to pay contractor claims when they resulted solely from the adjustment in overhead rates.
- b. The Government philosophy changed and we adopted, with other agencies, the precedent set by the ASBCA decision in 1968 in the United Shoe Machinery case.
- c. The new philosophy and policy was based on the fact that the Contracting Officer is not contractually obligated to pay contractor's claims for additional costs, exceeding the contract price, when the contractor violates the Limitation of Cost Clause.
- d. The Limitation of Cost Clause, which is in all our cost type contracts, states that the contractor must report to the Contracting Officer if he has reason to believe that the total cost to the Government, exclusive of fee, will be greater or less than the estimated cost as stated in the contract.
- e. When the Government is given timely notice of a pending overrun there are three alternatives available to the Government: (1) cancel the work, (2) reduce the scope of work, and (3) fund the additional costs.

**SECRET**

**SECRET**

## Minutes of the ACRB - 26 January 1972

f. Procurement Note No. 40 dated 1 July 1970 was issued instructing Contracting Officers to advise all contractors that the Agency intended to enforce the Limitation of Cost Clause and the sample letter attached contained information to be transmitted to all contractors.

6. At the conclusion of [ ] briefing, [ ] presented the facts concerning the case at hand. The facts are summarized as follows:

25X1

a. There are five contracts in the group with overruns totaling [ ]

25X1

b. Contractors claim is dated 10 August 1970.

c. The Contractor has based his claim on the fact that its costs were not known until after DCAA had negotiated final overhead rates.

d. The fiscal years concerned are 1968, 1969, and 1970.

e. The contractor saw no reason to handle this submission differently from those of the past as CIA had always honored overrun claims based on overhead rate adjustments.

f. The 10 August 1970 submission was the contractor's first claim to additional costs even though some of the contract completion dates preceeded the submission by as much as 18 months.

g. Contracting Officer recommends denial of all claims in total.

25X1

h. The Contractor has informally suggested a settlement figure of [ ]

i. The Contractor has indicated his intent to take the case to the ASBCA in case of denial.

After a general discussion of the facts mentioned above the Board agreed that the Contractor's claim should be denied.

7. [ ] advised the members that this case was brought before the Board at his request. The contracting officer was in a position to settle the case for a sum below the minimum requirements of the Board. The purpose of the presentation

**SECRET**

**SECRET**

Approved For Release 2006/02/06 : CIA-RDP74B00535R000100200003-9

Minutes of the ACRB - 26 January 1972

is to review the decisions of various contracting officers, interpretations of policy guides and directives and the influence that past actions may have on our decision to deny the Contractor's claim. [ ] was asked to continue his briefing on the Agency policy and how it relates to this case.

8. [ ] informed the Board that:

a. The case before the Board represents four claims out of a group of thirteen cases collectively submitted by Telcon at the same time.

b. The total claim was submitted to the Procurement Division under tasks against basic agreement 4705.

c. All the completed tasks held in the Procurement Division have been settled without question and the overruns paid in full. This totaled [ ] of which the largest amount paid on one task was [ ]

25X1  
25X1

d. The Procurement Division/OL interpretation of various directives, Procurement Note No. 40, the sample letter for all contractors, and the DD/S memorandum dated 15 May 1970, was that the Agency was establishing a new policy which would apply to all Agency contractors after the policy was announced.

e. Contracts with completion dates subsequent to the mailing date of the warning letter would be paid in accordance with the policy and custom in effect at the time.

f. It is obvious that there exists inconsistencies between contracting officers.

9. The inconsistency was discussed at length by the members. Serious concern was expressed. The Board concluded the case with a recommendation to the Director of Logistics that the Contractor's request for overrun funding be denied as proposed by the Contracting Officer. It was observed, however, that after due research of the files there may be legal issues or mitigating circumstances which can influence the degree of denial and the final position of the Agency.

**SECRET**

Approved For Release 2006/02/06 : CIA-RDP74B00535R000100200003-9

~~SECRET~~

Minutes of the ACRB - 26 January 1972

10. The DD/S representative was of the opinion that technical personnel in the several Directorates should be advised again of the Agency policy on denial of overhead overruns. [ ] advised against the members taking any formal action within their Directorates. He stated that the responsibility lay with the Contracting Officers who would be advised of the ACRB decision through the Procurement Policy Panel meetings and directly where applicable.

11. The meeting concluded at 1130 hours.

[ ]

PMS/OL

25X1

~~SECRET~~